IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10605 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL KALUBHAI BHERAJI PROP.SANT RAJARAM PETROLEUM

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10605 of 2001

MR BN PATEL for Petitioner No. 1

MR VC VAGHELA for Petitioner No. 1

MS NANDINI JOSHI AGP for Respondent No. 1-3

NOTICE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 01/11/2004

ORAL JUDGEMENT

1. The petitioner herein has preferred this petition in order to quash and set aside the order dated 12/10/2001 passed in Revision Application No.73 of 2001, at Annexure-L to the petition, the order dated 17/07/2001

passed by respondent no.2, at Annexure-K to the petition, and also the order dated 07/07/2001 passed by respondent no.3, at Annexure-G to the petition, and to direct the respondent authorities to grant licence to the petitioner for Retail Sale of Petrol / Diesel.

2. The petitioner was holding licence for the Retail Sale of Petrol / Diesel at Bhalasara, Taluka Tharad, District Banaskantha. The said Petrol Pump was proposed to be shifted to a better location at Thavar, Taluka Dhanera, District Banaskantha. Accordingly, the petitioner made a request to Bharat Petroleum Corporation Limited for the shifting of the said Petrol Pump to Taluka Dhanera. B.P.C.L. by letter dated 24/05/2000, requested the Collector, Banaskantha, to grant N.O.C. for the shifting of the Petrol Pump at Thavar. Permission for the said shifting was granted by letter dated 10/07/2000.

3. On 30/03/2001 the petitioner surrendered his old licence to the Mamlatdar, Tharad, as the said Petrol Pump at Bhalasara was closed for shifting to the new site at Thavar. By order dated 07/07/2001, at Annexure-G to the petition, the Mamlatdar, Dhanera, respondent no.3 herein, refused to grant licence as Retailer to the petitioner on the ground of pendency of some petition before this Court. By order dated 17/07/2001, at Annexure-K to the petition, the appeal filed by the petitioner was returned on the ground of jurisdiction. Therefore, the petitioner preferred revision being Revision Application No.73 of 2001 before the respondent State Government which was rejected by order dated 12/10/2001, at Annexure-L to the petition. Hence, this petition.

4. Ms.Nandini Joshi for the respondents has contended that the irregularities committed by the petitioner were of a very serious nature and that looking to the seriousness of the irregularities committed, the respondent authorities had come to the conclusion that it was not a fit case for the grant of licence to the petitioner. She has submitted that the alleged irregularities committed by the petitioner were under scrutiny before the earlier authority, and that the Appellate Authority, while deciding the appeal, had only imposed a penalty of confiscation of 30 per cent of the total quantity and had not imposed any other penalty. She has further submitted that the licence of the petitioner was continued, but, since the petitioner was desirous to continue his business at some other place, the petitioner had applied for the transfer of licence and under the Rules, shifting of place was not possible.

Therefore, the authority had directed the petitioner to apply afresh for the grant of licence.

5. In my view, the contentions raised by the respondent authorities are not well-founded, inasmuch as the previous Collector had thought it fit to confiscate 100 per cent of the quantity, but, the Sessions Court in the appeal preferred by the petitioner, had directed the confiscation of only 30 per cent of the said quantity. Moreover, no orders for the cancellation of licence of the petitioner was passed by the then Collector.

6. In above view of the matter, the view or the stand taken by the respondent authorities is not justified, as it would indirectly amount to cancellation of licence of the petitioner, which was not done earlier also.

7. In the result, the petition is allowed. The orders passed by the respondent authorities, at Annexures-`G', `K' and `L' are quashed and set aside. The Mamlatdar, Dhanera, respondent no.3 herein, is directed to consider the application of the petitioner for the grant of licence, within a period of three weeks from the date of receipt of writ of this order, without being influenced by the order passed by the earlier authority. With the aforesaid directions, the petition stands partly allowed. Rule is made absolute to the above extent.

(K. S. Jhaveri, J.)

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